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August 22, 1973

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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

RECD-S.E.C.

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Division of Corporation Finance
500 North Capitol Street, N. W.,
Washington, D. C. 20549

Attention: Mr. Rosenblatt

Gentlemen:

This office has been requested to seek an appointment with the Division of Corporation Finance to discuss the feasibility of obtaining a no-action letter, or in the alternative, an interpretive opinion of the Staff regarding the subject matter set forth below.

Inquiry is directed towards an opinion of the Staff, dated January 29, 1973, in reply to a letter from the State Street Bank and Trust Company (No. 138) wherein there are set forth certain criteria, if followed, would permit a mutual fund to loan its securities and not come within any prohibition as set forth in the Investment Company Act of 1940.

We represent a company who is desirous of servicing mutual funds loans (of securities) to broker dealers on an annual retainer basis of 1% of the dollar amount loaned by said funds. During the life of the loan(s), this company would daily "mark the market" the securities under loan, check for dividends and interest to insure that such monies were remitted immediately to the lender, and generally, to oversee the follow-up of stock splits, name charges, rights and option issues and, of course, repayment on the due dates.

We plan to be in Washington next Wednesday and if it is possible to arrange an appointment at your convenience, we would be pleased to have the opportunity to explore the foregoing premise. Our other appointment can be readily adjusted to accommodate to your time.

Sincerely yours,

BSK:L

BERNARD S. KANTON

Section 8, 13, and 36 of the Investment Company Act of 1940, taken together, impose upon the directors of a mutual fund a fiduciary duty to invest the fund's assets according to its stated investment goals. Lending the fund's portfolio securities creates some risks of forced sales upon default, but we have not objected to such arrangements if the safeguards set forth in our correspondence with State Street Bank & Trust Company are met, including the accrual of commensurate benefits to the fund in return for its assumption of these risks. Since lending portfolio securities may be unfamiliar to many mutual fund directors, we would not object to your client's charging a fee for arranging loans of portfolio securities, as explained above, provided that (1) your client discloses to its potential clients' directors in writing that it is possible to arrange for the fund's securities to be borrowed without paying any fee, (2) neither your client nor any of its affiliated persons is an affiliated person of the fund, its investment adviser or its principal underwriter (see Section 2(a)(3) of the Act for definition of affiliated person), and (3) your client receives a written representation from each mutual fund that its directors have determined that the fee is reasonable and based solely on the services rendered.

Alan Rosenblat, Chief Counsel
Division of Investment Management Regulation

September 17, 1973

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